IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shanti Lal v. Union of India & Ors.

S.B.CIVIL WRIT PETITION NO.645/1993
under Article 226 of the Constitution of India.

Date of Order : 22nd March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. D.D.Thavi, for the petitioner.
Mr. L.R.Upadhyay, Dy.Govt.Advocate.

BY THE COURT :

By this writ petition a challenge is given by the petitioner to the order dated 30.12.1992 passed by Government of India exercising powers under Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 read with Rule 55 of the Rajasthan Minor Mineral Concession Rules, 1960 whereby the order passed by the Government of Rajasthan dated 7.12.1988 rejecting the appeal of the petitioner in respect of cancellation of mining lease for mineral “bajri” in village Banas District Sirohi was upheld.

The facts in brief are that a mining lease (Direct Working Contract) for mineral “bajri” was

granted to the petitioner for a period of five years w.e.f. 18.3.1968. The first renewal of the mining lease was made in favour of the petitioner for a period of five years w.e.f. 18.3.1973 at fixed dead rent of Rs.1650/- per annum. Second renewal of mining lease was also made in favour of the petitioner for a period of ten years w.e.f. 18.3.1978. The petitioner submitted an application on 14.9.1987 for further renewal of mining lease prior to a period of six months from the date of expiry of mining lease i.e. 17.3.1988. There were certain disputes with regard to settlement of dead rent as the same was enhanced by the State Government with retrospective effect. The petitioner deposited the dead rent which was settled initially, however, the enhanced dead rent was not deposited by him as the same was challenged by him as well as by number of other persons by way of filing writ petitions before this Court. The mining lease granted in favour of the petitioner was cancelled by Mining Engineer concerned by an order dated 4.1.1988 as the petitioner failed to deposit the arrears of about Rs.11671.15 against dead rent.

The petitioner challenged cancellation of mining lease by order dated 4.1.1988 by way of filing an appeal before the Government of Rajasthan. The appeal was rejected by the State Government under an order dated 7.12.1988. The validity of order dated 7.12.1988 was challenged by the petitioner by way of

filing a revision petition before the Government of India. The revision petition preferred by the petitioner was also rejected by Government of India by order dated 30.12.1992, hence this writ petition is preferred by the petitioner.

A reply to the writ petition has been filed on behalf of the respondents. In reply, it is stated by the respondents that in light of the judgment given by Hon'ble Rajasthan High Court in S.B.C.W.P. No.2050/1986 cancellation of lease on ground of the payment of dead rent has become ineffective. The relevant portion of the reply given by the respondents reads as under:-

> "2.That after issuing a notice to the petitioner, the lease was cancelled vide order dated 13.4.1987 on the ground that the petitioner had failed to deposit the dues. It is further mentioned that the dues were deposited by the petitioner on 15.6.1987 just after expiry of a period of 2 months from the date of the cancellation of the lease. Any how, since the question of payment of dead-rent with retrospective effect has been finally decided by this Hon'ble High Court by the aforesaid judgment, the cancellation of lease on that ground, became ineffective."

In view of the reply given by the respondents the reason for cancellation of mining lease does not

exist. However, the Appellate Authority as well as the Revisional Authority also refused for grant of mining lease to the petitioner on the count that the State Government introduced a new policy for grant of mining lease according to which the petitioner was not eligible to get the same.

I have heard counsel for the parties.

The main reason for which the mining lease was cancelled does not exist as it is apparent from the contents of the reply to the writ petition given by the respondents, a relevant portion of which has already been referred above. Precisely, the question now remains is as to whether on account of the policy introduced by the State Government subsequent to the cancellation of mining lease can debar the petitioner from getting the mining lease renewed. According to the respondents the new policy was introduced under a notification dated 27.4.1989 for auctioning royalty collection contracts for Banas river in District Sirohi. The mining lease of the petitioner was in currency uptil 18.3.1988. He submitted an application for renewal of the same on 14.9.1987. The day on which the petitioner submitted application for renewal of the mining lease, the new policy was not at all in existence. The respondents were required to consider that application prior to expiry of the lease period. The subsequent events could have not been taken into

consideration while considering the application for renewal. In view of it, the respondents have wrongly refused to consider the application for renewal of the mining lease on introduction of new policy.

In view of whatever discussed above, the writ petition deserves acceptance. The same, therefore, is allowed. The order impugned dated 30.12.1992 passed by Government of India is hereby quashed. The order affirmed by the Revisional Authority i.e. the order dated 7.12.1988 is also hereby quashed. The respondent Mining Engineer, Sirohi is directed to consider the application submitted by the petitioner for renewal of mining lease afresh in accordance with law by taking into consideration the position as it was existing on the date the application for renewal was submitted.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.